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IDAHO PUBLIC
UTILITIES COMMISSION

Ms. Jean Jewell
Idaho Public Utilities Commission
472 West Washington
Post Office Box 83720
Boise, Idaho 83720-0074

Re: Case No. GNR-T-02-16
MTBR&F File No. 14-926.7

Dear Ms. Jewell:

Enclosed for filing are an original and seven copies of Petition For Declaratory Order Regarding the Use of Virtual NPA/NXX Calling Patterns regarding the above-referenced matter. Also, pursuant to the Commission's request, we have forwarded this document in PDF format to you on August 26, 2002, via e-mail. Thank you for your assistance.

Very truly yours,

Jennifer Taylor
Administrative Assistant to
Morgan W. Richards, Jr.

/jrt

Enclosures

cc: Counsel of Record (w/encl.)

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Attorneys for Petitioners

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF
POTLATCH TELEPHONE COMPANY;
CENTURYTEL OF IDAHO; CENTURYTEL
OF THE GEM STATE; AND THE IDAHO
TELEPHONE ASSOCIATION,

Petitioners.

Case No. GNR-T-02-16

**PETITION FOR DECLARATORY ORDER
REGARDING THE USE OF VIRTUAL
NPA/NXX CALLING PATTERNS**

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IDAHO PUBLIC
UTILITIES COMMISSION

I.

NATURE OF ACTION

1. The petitioners file this action pursuant to IDAPA 31.01.01.101 and 102, IDAPA 31.42.01.101, and IDAPA 31.01.01.33.

2. The petitioners seek an order from the Idaho Public Utilities Commission declaring that the use of Virtual VNXX or VNXX-like services are not in the public interest and prohibiting their use in Idaho. In the alternative, petitioners seek an order from the Commission declaring that the use of VNXX or VNXX-like services are MTS or the equivalent of MTS and are subject to the assessment and payment of access charges.

3. The petitioners also seek an order from the Commission declaring that the use of VNXX or VNXX-like services are an inappropriate use of numbering services and a violation of number portability standards; and are in violation of funding requirements for the USF, TRS and high cost fund requirements.

II.

PETITIONERS

4. Petitioner Potlatch Telephone Company ("Potlatch") is a corporation organized under the laws of the state of Idaho, with its primary place of business located in Kendrick, Idaho. Potlatch is an ILEC authorized to provide local exchange and other telecommunications services within the state of Idaho pursuant to a certificate of public convenience and necessity issued by this Commission pursuant to Title 61, Idaho Code. All pleadings, correspondence and other communications concerning this petition should be directed to the ITA's representatives as follows:

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5. Petitioner Centurytel of Idaho is a corporation under the laws of the state of Delaware, with its primary place of business located in Salmon, Idaho. Petitioner Centurytel of the Gem State is a corporation organized under the laws of the state of Idaho, with its primary place of business located in Grandview, Idaho. Both companies are ILECs authorized to provide local exchange and other telecommunications services within the state of Idaho pursuant to their certificates of public convenience and necessity issued by the Commission pursuant to Title 61, Idaho Code. (Hereinafter, the two companies will be referred to collectively as "Century"). All pleadings, correspondence and other communications concerning this petition should be directed to the ITA's representatives as follows:

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6. Petitioner Idaho Telephone Association ("ITA") is a nonprofit association.

ITA represents 14 small ILECs that provide local exchange and related telecommunication services in predominantly rural areas of Idaho. Some of the ITA member companies also operate as CLECs, either directly or through affiliates or subsidiaries. The ITA is authorized to represent its member companies in proceedings before the Commission and other official bodies. The 14 carriers include: Albion Telephone Company, Cambridge Telephone Company, Midvale Telephone Exchange, Direct Communications Rockland, Silver Star Telephone Company, Rural Telephone Company, and Inland Telephone Company. All of these companies receive support from the Idaho Universal Service Fund. All pleadings, correspondence and other communications concerning this petition should be directed to the ITA's representatives as follows:

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III.

JURISDICTION

7. VNXX services provide two-way communication to the public for compensation. Therefore, these services are “telecommunication service” as defined in Titles 61 and 62 of Idaho Code. *See* Idaho Code §§ 62-603(9) and 61-621(2). Entities providing telecommunication service are “telephone corporations” and are subject to regulation by the Commission. Idaho Code §§ 61-121(1) and 62-603(10).

8. In addition, the Idaho Public Utilities Commission has jurisdiction over this matter pursuant to at least the following statutory provisions: Idaho Code Sections 62-603, 62-604, 62-609, 62-614, 62-622(4)(c), 61-302, and 61-315.

IV.

GENERAL ALLEGATIONS

9. Petitioners and/or their members are aware of situations in other states where competitive local exchange carriers (“CLECs”) are requesting to enter into relationships under which a virtual NPA/NXX (“VNXX”) would be established within individual local exchange areas or extended area service (“EAS”) of the petitioners or their members (i.e., one NPA/NXX per rate center). An alternative method for establishing a VNXX may be to use one NPA/NXX over multiple rate centers.

10. VNXX calling occurs when telephone numbers containing exchange, or “NXX” codes associated with a particular exchange are assigned to customers with no physical presence in that exchange. The result of such assignments is that calls dialed between locations that are not within the same local calling area are rated as local rather than toll. Consequently, the end users do not pay toll charges (either the originating party for normal toll-dialed calls or the receiving party for 800-type calls).

11. Petitioners believe at least one or more CLECs that provide VNXX or VNXX-like services in other states are now certificated in Idaho.

12. The apparent purpose of establishing VNXX or VNXX-like arrangements would be to allow customers of the petitioners and/or their members to call a customer of a VNXX provider on a local dialing pattern basis. However, the physical location of the customer would not be within the local exchange area (nor an EAS calling area), but in some remote local exchange area. Thus, the use of the VNXX would result in the unlawful transporting of telephone calls between local exchanges. A call under these circumstances would be classified as a local call even though it would otherwise be a long-distance call. Under this system, calls would occur without the payment of the required access charges to the originating and terminating local exchange provider, or the payment of toll charges.

13. For example, under a VNXX arrangement, a CLEC could obtain an NPA/NXX for the Fruitland local exchange area. It may have a customer located in Burley to whom it would assign a number out of the Fruitland local exchange area NPA/NXX assigned to that CLEC. In theory, this would then allow a customer to reach the CLEC’s customer which has been assigned a number out of the VNXX on a local dial basis. Through transport arrangements

such as a direct T-1, that call would be hauled back to the CLEC's switch and then be terminated to the CLEC's end use customer in Burley. Using VNXX, therefore, the call is treated as a local call.

14. Under an "end-to-end" analysis of the calling pattern, this would not be a local call. Instead, this would be an interexchange call for which a toll charge would apply, and access charges would be assessed on the originating and terminating ends of the call.

15. The "end-to-end analysis" has its origin in Federal Communications Commission ("FCC") orders discussing the nature of calling patterns. This analysis looks at where the call actually originates and terminates. For example, *see In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 96-88, No. 99-68, F.C.C. 01-131 (released April 27, 2001).¹

16. In Idaho, it appears that this end-to-end analysis of the nature of the traffic, looking at the location of the calling party and the location of the called party, is particularly appropriate. Under Idaho Code Section 62-603 there is a specific definition of the term "basic local exchange service." It is defined as "the provision of access lines to residential and small business customers with the associated transmission of two-way interactive switched voice communication within a local exchange calling area." I.C. § 62-603(1). A "local exchange calling area" is defined as "a geographic area encompassing one (1) or more local communities as described in maps, tariffs, rate schedules, price lists, or other descriptive material filed with the commission by a telephone corporation, within which area basic local exchange rates rather

¹Please note: This case was recently remanded to the FCC by the Court of Appeals.

than message telecommunication service rates apply.” I.C. § 62-603(7). Since the call in the example in paragraph 13 originates within the Fruitland exchange, as defined on that exchange map, and terminates in the Burley exchange, as defined by that exchange map, the call is an interexchange call. Obviously, there is not an extended area service route in place between Fruitland and Burley.

17. The possibility of different classifications for the same physical call raises concerns that the petitioners or their members could be held in violation of Idaho law (*e.g.* I.C. § 61-315) for an unjust discrimination in rates as between the CLEC using a VNXX and an IXC which does not; for providing reduced rates; and for providing undue preference or advantage to the carrier in scenario one over carrier in scenario two. Thus, petitioners are in a position where they must seek a declaratory order from the Commission clarifying their responsibilities in these circumstances.

18. Section 62-622(4)(c) expresses a clear legislative intent to make sure that switched/special access charges are not avoided by scams. A declaratory order from the Commission can clarify whether virtual NPA/NXX calling patterns are in violation of this statute.

19. Depending on the method of deployment of the VNXX, it can raise significant issues relating to either number resources or number portability. If a new NPA/VNXX is obtained for each rate center within the state, then this is a significant waste of numbering resources. This Commission has undertaken significant efforts to conserve number resources in order to delay NPA overlays, and to the extent possible, preserve seven-digit dialing. On the other hand, if a single NPA/NXX is desired to be spread across multiple rate centers, then

this raises a concern about the mechanics of number portability and may be in violation of the industry standards established and approved by this Commission.

20. In any event VNXX and VNXX-like services raise serious concerns about the public's interest; integrity of local calling areas; conservation of numbering resources; and the avoidance of customer confusion. The use of such a system erodes the entire distinction between local and toll calls in Idaho and bypasses the Commission's carefully designed regulatory process. This type of activity will result in rate increases for local customers. The increases will be felt particularly in those areas serviced by small telephone companies with rural customer bases, such as petitioners and their members. This result will not occur due to technological or service innovations, but instead will be merely the result of responses to arbitrage. The public interest will not be advanced.

21. The use of VNXX and VNXX-like services also exacerbates the problem of preserving the 208 area code for the entire state of Idaho. If VNXX calling is allowed, the location of the customers is separated from the exchange to which an NXX is assigned. The result is a substantial incentive to exploit arbitrage opportunities.

22. The Idaho Public Utilities Commission has rejected similar proposals relating to EAS "bridging" or "arbitrage" as unlawful and not in the public's interest. *See, e.g., Idaho Local Exch. Cos. v. Upper Valley Communications, Inc.*, IPUC Case No. GNR-T-94-1.

23. Numerous other states have already considered these issues. In some cases these issues have arisen in arbitration disputes questioning whether the assessment of reciprocal compensation is appropriate. In other words, the question has been whether the use of a VNXX

results in a “local” call for purposes of applying reciprocal compensation. The following cases held that UNXX calls are interexchange traffic and subject to access charges:

a. The New York Public Service Commission ruled against a similar scheme calling it a “transparent long distance telephone service, virtually identical to traditional circuit-switched carriers. . . we also conclude that DataNet imposes the same burdens on the local exchange as do other interexchange carriers and should pay all applicable and appropriate charges paid by other long distance carriers, including access charges.” *Complaint of Frontier Telephone of Rochester Against US DataNet Corporation Concerning Alleged Refusal to Pay Intrastate Carrier Access Charges, Case No. 01-C-1119, issued May 31, 2002.*

b. The Public Utilities Commission of Ohio very recently issued a decision in which it concluded that such calling was interexchange traffic subject to access charges. *In the Matter of the Petition of Global NAPs, Inc. for Arbitration*, Case No. 01-2811-TP-ARB and Case No. 01-3096-TP-ARB, Arbitration Award (May 9, 2002) at 8-11.

c. In South Carolina, that state’s Commission recently ruled that the use of a VNXX was an interexchange call under an “end-to-end” analysis and that access charges would apply. *In re Petition of Adelphia Business Solutions of South Carolina, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc.*, Docket No. 2000-516-C, Order No. 2001-045 (Jan. 16, 2001). The South Carolina Commission relied on FCC analysis that telecommunications traffic is local only if it originates and terminates within the same local calling area. *See* South Carolina Order at 7. The South Carolina Commission went on to hold that under this analysis reciprocal compensation is not due on calls

placed to VNXX numbers as the calls do not terminate within the same local calling area in which the call originated. The South Carolina Commission held that access charges should apply to such calls. *See* South Carolina Order at 13.

d. The Maine Commission analogized VNXX service to that of an 800 service and held that access charges should apply. *See In re Investigation into Use of Central Office Codes (NXX) by New England Fiber Communications, LLC d/b/a Brooks Fiber*, Docket No. 98-758, Order (June 30, 2000) at 12.

e. In Georgia, a similar decision was reached where the Georgia Commission held that while a CLEC could create a VNXX, traffic had to be separated between local and toll traffic for proper routing and billing of calls. *See In re Petition of BellSouth Telecommunications, Inc. for Arbitration of an Interconnection Agreement with Intermedia Communications, Inc.*, Docket No. 11644-U (July 5, 2000) at 13.

f. Similar results were reached in Tennessee and Missouri. *See In re Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc.*, Docket No. 99-00948, Interim Order of Arbitration Award (Jan. 25, 2001) at 44. *See also In the Matter of the Application of AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc., and TCG Kansas City, Inc., for Compulsory Arbitration of Unresolved Issues With Southwestern Bell Telephone Co.*, Case No. TO-2001-455, Arbitration Order (June 7, 2001) at 31.

V.

RELIEF REQUESTED

24. VNXX and VNXX-like services are “message telecommunication services” or “MTS” as defined by Idaho Code and administrative rules, or the functional equivalent thereof. Idaho Code § 62-603(8). *See also* Idaho Code § 61-121.

25. Idaho Code Section 62-609(1) requires providers of message telecommunications service to “impute to themselves, in the aggregate on a service by service basis, their individual cost of special or switched access or its equivalent in their prices.” Providers of VNXX services should be required to impute the cost of switched access in their price in compliance with Idaho Code Section 62-609(1).

26. Idaho Code Section 62-609 provides for the payment of access charges by telephone corporations and providers of services to LEC’s for providing access to local exchange networks. VNXX, and VNXX-like services unreasonably and unfairly utilize LEC’s plant and facilities without justly compensating the LEC for such use under Idaho Code Section 62-609(2).

27. VNXX and VNXX-like services result in a preference and unfair advantage in violation of Idaho Code Section 62-609. To the extent that there is a difference in treatment for the same physical call (it originates in one rate center and terminates in a different rate center), whereby one carrier is given preferential treatment and charged less than a carrier transmitting an identical call, petitioners and their members are adversely affected by being placed at risk of violation of the state statutes herein cited.

28. VNXX calling creates an incentive on the part of CLECs to obtain, and waste, vast numbers of telephone numbers, and may result in the violation of number portability standards demonstrating that VNXX and VNXX-like services are not in the public interest.

29. VNXX and VNXX-like services also adversely affect the universal service fund (“USF”) and the telecommunications relay system fund (“TRS”); and the high cost universal service fund. Idaho Code §§ 62-610, 61-1304 and 62-610F. This is because if MTS traffic is diverted to the VNXX service, the total amount of MTS minutes is reduced. The USF and TRS are funded by a surcharge on MTS minutes, and any reduction in MTS minutes directly reduces the level of funding. *See* IDAPA 31.46.01 and IDAPA 31.46.02. When the high cost universal service fund is implemented, a similar adverse effect is expected to occur.

30. VNXX and VNXX-like services are inappropriate and not in the public interest. If not flatly prohibited under Idaho law, VNXX and VNXX-like service providers should be required to pay originating and terminating access charges to the serving local exchange companies; should be required to impute to themselves their costs in pricing; and should be required to comply with all applicable provisions of Idaho law. *See* Idaho Code § 62-609.

VI.

PRAYER FOR RELIEF

WHEREFORE, the petitioners pray for an order from the Commission granting the following relief:

1. For an order declaring that the use of VNXX or VNXX-like services are not in the public interest, prohibiting their use in Idaho, and authorizing immediate termination

and disconnection of such services by any Idaho LEC;

2. For an order, in the alternative, declaring that the use of VNXX or VNXX-like services are MTS and are subject to a) toll charges; b) the assessment and payment of access charges; c) imputing of costs in pricing; and d) all applicable state laws and regulations;

3. For an order declaring that such service arrangements are an inappropriate use of numbering resources where that service uses a new NPA/NXX for each rate center, and prohibit such practice; and declaring that where a single NPA/NXX is desired to be spread over several rate centers, such practice would violate standards needed to implement number portability, and is prohibited.

4. For an order declaring that the use of VNXX and VNXX-like services violate state law by improperly and unlawfully resulting in a decrease in the level of funding for the USF, TRS and high cost funds.

Respectfully submitted this 27th day of August, 2002.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Morgan W. Richards, Jr.
Morgan W. Richards, Jr. - Of the Firm
Attorneys for Petitioners Potlatch and Century

GIVENS PURSLEY LLP

By Conley E. Ward, Jr.
Conley E. Ward, Jr. - Of the Firm
Attorneys for Idaho Telephone Association

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of August, 2002, I caused a true and correct copy of the foregoing **PETITION FOR DECLARATORY ORDER** to be served by the method indicated below, and addressed to the following:

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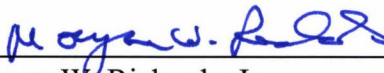
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